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VIA HAND DELIVERY

UNDER SEAL

Mark J. Langer
Clerk
United States Court of Appeals
District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

Re: In Re: Bruce Edward Babbitt, Division No. 98-1

Dear Mr. Langer:

I am writing on behalf of my client Elena Kagan regarding Independent Counsel Carol Elder Bruce's Report ("the Report") regarding Bruce Edward Babbitt, No. 98-1.

I respectfully request that the Report should be changed to reflect accurately the available evidence. The Report indicates in the text and a footnote on page 363 that Ms. Kagan, formerly Associate Counsel to the President of the United States, "faxed" a copy of an affidavit by Paul Eckstein to Department of Interior Associate Solicitor Robert Anderson on August 5, 1996 at his request. While the Eckstein affidavit was a public record at that time and it would have been appropriate for Ms. Kagan to transmit it to Mr. Anderson, the documents available to Ms. Kagan indicate that she did not transmit this document to him.

These documents suggest that the fax cover sheet of August 5, 1996 (see Exhibit 1), was not attached to the Eckstein affidavit but rather to another document. Ms. Kagan was interviewed by the Independent Counsel's Office on May 26, 1999. She was shown the August 5 fax cover sheet in the interview and told the staff that she believed she was sending Mr. Anderson a letter previously sent to Sen. McCain by Harold Ickes, Assistant to the President and Deputy Chief of Staff. Documents submitted to the Independent Counsel's Office bearing Bates